

The Yarmouth Taxpayers/ Registered Voters

Plaintiffs

VS

The Dennis Yarmouth School Committee

The Town of Dennis

The Town of Yarmouth

Defendants

This Complaint seeks declaratory and a adjunctive relief against the Defendants with respect to certain actions of the Defendant Dennis-Yarmouth Regional School District regarding votes taken for approval of debt for replacement of two schools in the regional school district.

The Plaintiffs allegations are as follows:

1. The Plaintiffs, Thomas James Sullivan Jr. 14 Bunting

Lane, West Yarmouth Ma., Vida Morris, 74 Shaker

House Road, Yarmouth Port Ma are Taxpayers/ Voters

and Residents in the Town of Yarmouth.

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2. The Defendant Dennis-Yarmouth Regional School District is a duly constituted regional school district established and existing under G L. c. 71, with a principal address of 296 Station Avenue in Yarmouth Massachusetts ("DYRSD").
4. The Defendant Town of Dennis is a Massachusetts Municipal Corporation with a principal address of 685 Route 134, Dennis, Massachusetts ("Dennis")
5. The Defendant Town of Yarmouth is a Massachusetts municipal Corporation with a principal address of 1146 Route 28, South Yarmouth, Massachusetts ("Yarmouth")

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6. Dennis and Yarmouth are the sole member communities of DYRSD.

7. DYRSD, as it is currently comprised, is established through, and governed by, a certain regional agreement, originally executed on or about 1975 and as amended most recently in the Spring of 2013 (the "Agreement"). The Agreement was approved by the Town Meetings in both Yarmouth and Dennis.

A copy of the current Agreement is attached hereto as

Exhibit A.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

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8. Pursuant to G.L. c. 71, a regional agreement governing a regional district may contain a variety of binding requirements including the method of incurring debts and expenses.

Although DYRSD and the Town Meetings in Dennis and Yarmouth were not required to adopt a provision in the Agreement that limited the method of incurring debt, they elected to do so. Accordingly, Section 9 of the Agreement, states, in its entirety

AUTHORIZATION OF DEBT The incurring of debt, except temporary indebtedness in anticipation of revenue, by the District shall be subject to disapproval by the registered voters in the member towns pursuant to the provisions of clause (d) of

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section 16 of chapter seventy-one of the General Law, as it may from time to time be amended.

9. The DYRSD school system includes several different buildings, including the Mattacheese Middle School, which is located at 400 Higgins Crowell Road in Yarmouth ("Mattacheese"). Given the age and condition of Mattachee, the Yarmouth Town Meeting voted in 2016 to appropriate the sum of \$750,000 to conduct a design and feasibility study for repairs to and/or replacement of the school. To this end, it has been the invariable custom and practice of Dennis and Yarmouth to seek Town Meeting approval for DYRSD capital projects.

10. DYRSD ultimately determined that Mattacheese needs to be rebuilt, along with the Nathaniel H. Wixon School, which is located at 901 Route 134, South Dennis, MA ("Wixon") at a total approximate cost of \$117,000,000.00. After re-bursements from State authorities, the cost to Dennis and Yarmouth collectively would be approximately 72.9 million dollars. Yarmouth's share of the indebtedness would

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be approximately 48.7 million dollars and Dennis's share would be approximately 24.2 million dollars.

11. DYRSD proposed that all of such funds for the full project would be raised by the incurring of debt by Dennis and Yarmouth. However, despite the binding terms of the Agreement, and the longstanding practice of seeking Town Meeting approval for DYRSD capital projects, DYRSD failed to employ the provisions of G.L. c. 71, §16(d), as required in the Agreement. Rather, DYRSD provided notice that it would seek to authorize debt via a ballot vote of

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residents within the two towns comprising the district,

as outlined in the provisions of G.L. c. 71, §16(n).

Nowhere, in the Agreement does it provide for the
incurring of capital debt by a ballot vote that
excludes Town Meeting's legislative role.

12. By attempting to forego the required use of said
Chapter 71, Section 16(d) DYRSD has deprived the
Taxpayers/Registered voters of Dennis and Yarmouth
from an opportunity to both debate this matter and
receive the recommendations of the Boards of
Selectmen and Finance Committees in each

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Town in the Town Meeting setting. Furthermore,

DYRSD's actions deprive the two Towns' statutorily
authorized opportunity to disapprove the proposed
debt.

13. DYRSD has alleged that the use of said Chapter
71, Section 16(n) is authorized by the provisions of
G.L. c. 71, §14D but such provisions are inapplicable
where, as here, a regional agreement has a specific
provision that requires the use of said Section 16(d) to
authorize debt. Furthermore, Section 9 of the

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Agreement pre-dates the 1995 adoption of the
relevant provisions of G.L. c. 71, §14D.

14. On December 4, 2018, at the insistence of
DYRSD, Dennis and Yarmouth each member Town
held local elections (See Exhibit B) for the approval
of debt pursuant to said Chapter 71 Section 16(n) In
Yarmouth, the vote failed by margin of 1500 to 1957.
In Dennis, the vote passed by a margin of 1361 to
879.

15. To the extent that the total vote across the District
may be relevant, the total was 2861 to 2836. By
violating G.L. c. 71, §16(n), 21 DYRSD declared

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that the debt was approved and could now be issued.

Plaintiffs repeats, re-alleges and incorporates the

allegations contained in paragraphs 1 through 15

above as if each were fully set forth herein.

Count One

16 By employing the provisions of said Chapter 71

Section 16(n) instead of the required provisions of said

Chapter 71 Section 16(d) to authorize debt for the

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Mattacheese and Wixon reconstruction project.

DYRSD has violated the terms of both the Agreement
and the applicable provisions of Massachusetts law.

By failing to employ the provisions of said Chapter
71 Section 16(d) as required by the Agreement, the
said December 4th vote is in effective to authorize the
proposed debt for the Mattacheese and Wixon
reconstruction project and is otherwise null and void.

COUNT TWO

17. Plaintiff repeats, re-alleges and incorporates the
allegations contained in paragraphs 1 through 16
above as if each were fully set forth herein.

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18. DYRSD has Violated the provisions of G.L. c. 71, §16(n) by relying upon a vote total across the entire district rather than considering the vote for each town as stated in Chapter 71 Section 16(n). The town clerk of each town shall certify the results of the election to the district committee. Except as provided herein the election shall be conducted in each town in the same manner as town meetings for the election of town officers. Based upon the failure of the vote in Yarmouth, DYRSD's proposed issuance of debt has not received requisite municipal pursuant to the terms of said Chapter 71 Section 16(n) and, accordingly, the determination by DYRSD that the said vote to authorize capital debt passed is incorrect and, therefore, no debt may be issued.

WHEREFORE, Yarmouth respectfully requests that this honorable Court:

- a. Declare and determine that DYRSD's actions were in violation of the Agreement; Declare and determine that the December 4th vote was ineffective to approve the proposed indebtedness for the Mattacheese and Wixon reconstruction project; Declare and determine that any capital debt incurred by DYRSD for the purposes

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herein described or similar purposes can only be by
application of Section 9 of the Agreement and G.L. c.
71, §16(d), as incorporated therein;

b. Declare and determine that the failed vote in

Yarmouth is inclusive to DYRSD's proposed

issuance of debt for the Mattacheese/Wixon

reconstruction project.

c. Enjoin DYRSD from incurring any debt for such

purposes as a result of the vote of December 4,

2018;

d. Award the Plaintiff such other relief as the Court deems just
and equitable.

e. Enjoin DYRSD from incurring any debt for such purposes
as a result of the vote of December 4, 2018;

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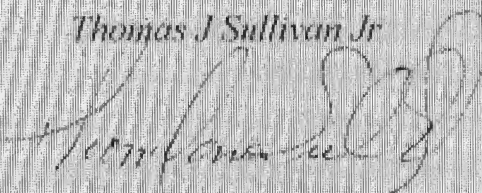
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f. Award the Plaintiffs such other relief as the Court deems just
and equitable.

The Plaintiffs

Thomas J Sullivan Jr



Vida Morris

Vida R. Morris